United States Postal Service *and* American Postal Workers Union, Greater Greensboro SCF Area Local 711, AFL–CIO. Case 11–CA–14242(P)

June 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On August 29, 1991, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief, and reply briefs to the Charging Party's and the General Counsel's answering briefs. The Charging Party filed exceptions, a brief in support and an answering brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

As more fully described by the judge, the Union, pursuant to its investigation of two grievances alleging disparate treatment of two bargaining unit employees placed on restricted sick leave by the Respondent, requested from the Respondent the absence analysis records (United States Postal Service Forms 3972) for various employees in pay location 183.[2] The Union also requested that the Respondent identify which, if any, employees had been placed on restricted sick leave. The Respondent supplied the forms, but deleted all the employees' names and social security numbers, and thus all identifying information, from the forms. The Respondent also failed to designate the employees placed on restricted sick leave.

The judge found that the information sought by the Union was relevant and necessary to the Union's investigation of the grievances, and that the Respondent's failure to provide the information with the ''names and other identifying matter left in place,'' and its refusal to identify which, if any, employees had been placed on restricted sick leave, violated Section 8(a)(5) and (1) of the Act.

We agree with the judge except as follows. We do not find, on the facts of this case, that the employees' social security numbers on the forms requested were presumptively relevant to the Union's performance of its duties as representative of the unit employees.[3] Further, the General Counsel and the Union failed to demonstrate the relevance of the social security numbers and thus failed to show any special circumstances warranting the furnishing of the social security numbers. Accordingly, we find that the Respondent was obligated to provide the forms to the Union with only the employees' names unredacted,[4] and to identify which employees, if any, had been placed on restricted sick leave.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Greensboro, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a) and reletter subsequent paragraphs.

''(a) Refusing to bargain collectively and in good faith with the exclusive bargaining representative, American Postal Workers Union, AFL–CIO, by refusing to furnish it or its affiliated local, the American

[1] The Charging Party filed a motion to strike a memorandum attached to the Respondent's supporting brief. In its motion, the Charging Party urged the Board not to take official notice of the memorandum (which involved another lawsuit), or in the alternative to take official notice of other facts and documents. The Respondent filed an opposition to the Charging Party's motion. The Charging Party's motion to strike is granted.

The Charging Party filed a motion requesting that the Board take official notice of charges filed by the Respondent against various local unions in unrelated cases. The Respondent filed an opposition to the motion. The Charging Party's motion is denied.

The Respondent filed a motion to strike the Charging Party's exceptions as untimely. On October 25, 1991, the Board granted an extension of time to file ''cross-exceptions and/or answering briefs'' to November 8, 1991. On November 5, 1991, the date for receipt of answering briefs was extended to November 18, 1991. By letter dated November 27, 1991, the Charging Party, contending that it had not been served with any exceptions or briefs from the Respondent, requested an extension of time to file ''its answering brief.'' On December 2, 1991, in response to the Charging Party's November 27 letter, the Board extended the time to file answering briefs to December 16, 1991. On December 10, 1991, the Charging Party filed exceptions and a brief in support with the Board.

The Board has held that an extension of time to file an answering brief will not enlarge the time to file cross-exceptions. *P & M Cedar Products*, 282 NLRB 772 fn. 1 (1987). Thus, we find that the Charging Party's exceptions are untimely and we grant the Respondent's motion to strike.

The Respondent filed motions to strike the Charging Party's notices of recent authority. The Respondent's motions are denied.

[2] Employees must submit medical documentation for each sick leave absence while on restricted sick leave. The evidence reveals that the Respondent determines whether to place employees on restricted sick leave by reviewing their absence analysis forms.

[3] We note that the Union's initial requests for information concerning the two grievances in question specifically asked only that the ''names'' of the employees be left on the forms.

[4] In its exceptions, the Respondent argues, inter alia, that one of the two grievances in issue has been settled and, therefore, it is no longer obligated to furnish the forms requested pursuant to that grievance. We find that the determination as to which employees' absence analysis records are to be provided to the Union is best resolved at the compliance stage of this proceeding.

[5] We have modified the Order and notice accordingly.

Postal Workers Union, Greater Greensboro SCF Area Local 711, AFL–CIO, with the requested absence analysis records (United States Postal Service Forms 3972) for all employees at pay location 183, without deleting the employees' names, and by refusing timely to identify which of those employees, if any, have been placed on restricted sick leave.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain in good faith with the exclusive bargaining representative, the American Postal Workers Union, AFL–CIO, by refusing to furnish it or its affiliated local, the American Postal Workers Union, Greater Greensboro SCF Area Local 711, AFL–CIO, with the requested absence analysis records (Forms 3972) of all employees employed at our pay location 183, without deletions of the employees' names.

WE WILL NOT refuse timely to identify which, if any, of those employees have been placed on restricted sick leave.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with all absence analysis records (United States Postal Service Forms 3972), without deleting the employees' names, of all employees employed at our pay location 183 and WE WILL identify which, if any, of those employees have been placed on restricted sick leave.

UNITED STATES POSTAL SERVICE

Rosetta B. Lane, Esq., for the General Counsel.
Robert Sindermann, Jr., Esq., for the Postal Service.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. American Postal Workers Union, Greater Greensboro SCF Area Local 711, AFL–CIO (Union) filed an unfair labor practice charge against the United States Postal Service (Postal Service) on January 25, 1991.[1] After investigating, the Regional Director for Region 11 of the National Labor Relations Board (Board), as an agent of the Board's General Counsel, issued a complaint and notice of hearing (complaint) against the Postal Service on February 15, 1991. I heard the case in trial at Greensboro, North Carolina, on May 22, 1991.

In substance, the complaint alleges the Postal Service failed and refused to provide the Union with certain information necessary and relevant to the Union's functioning as collective-bargaining representative of certain of the Postal Service's employees. It is alleged the Union made the request in its capacity as an agent of the exclusive bargaining representative. It is alleged that the Postal Service's failure to provide the requested information violates Section 8(a)(5) and (1) of the National Labor Relations Act (Act). The Postal Service in its timely filed answer denied the commission of any unfair labor practices.

I have carefully considered the trial record and the posttrial briefs of counsel for the General Counsel and the Postal Service. I observed the demeanor of the three witnesses as they testified. However, I note the parties do not challenge the facts herein. The Postal Service does seek to have the instant matter deferred to the grievance arbitration procedure established in the parties' collective-bargaining agreement. In this regard, I note that whether deferral is appropriate is a threshold question which must be decided in the negative before the merits of the unfair labor practice allegations can be considered. See, e.g., *L. E. Myers Co.*, 270 NLRB 1010 fn. 2 (1984). Before considering the deferral issue, it is necessary to establish the Board's jurisdiction in this case and to consider the issue of whether the Union is a labor organization within the meaning of the Act.

FINDINGS OF FACT

I. JURISDICTION

The Postal Service provides postal services for the United States of America and operates facilities throughout the United States in the performance of that function, including its general mail facility located at 900 E. Market Street, Greensboro, North Carolina, the only facility involved in this proceeding. I find the Board has jurisdiction over the Postal Service pursuant to section 1209 of the Postal Reorganization Act.

II. LABOR ORGANIZATION STATUS

It is alleged that American Postal Workers Union, Greater Greensboro SCF Area Local 711, AFL–CIO is a labor organization within the meaning of the Act. The Postal Service denies this allegation. In doing so, it points out that its bargaining obligation runs only to the National Union and not to the Charging Party herein which it refers to as a ''so-

[1] All dates herein are 1990 unless specified otherwise.

called local union.'' The Postal Service argues that since it has no obligation to bargain with the Charging Party ''so-called local union'' that ''organization'' lacks standing to bring a charge alleging a violation of Section 8(a)(5) of the Act. Thus, the Postal Service urges that I dismiss the charge based on the Local Union's (Charging Party's) lack of standing to file it. The Postal Service also urges the charge be dismissed because of the failure to allege in the complaint a claim upon which relief can be granted. In the alternative, the Postal Service requests that the labor organization complaint paragraph as described above be stricken in that no remedy could run to that ''organization.''

I shall examine the labor organization status of the Local Union as described above and the other intertwined contentions and arguments step by step. First, I am persuaded the Local Union, as described above, is a labor organization within the meaning of Section 2(5) of the Act. Section 2(5) of the Act defines a labor organization as:

> any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Local Union President Mark Dimondstein (Dimondstein) testified the Local Union has its own membership, officials, and constitution. The Local Union president appoints job stewards and, as appropriate, designates which stewards will handle specific grievances. The National Agreement between the American Postal Workers Union, AFL–CIO and the Postal Service at article 30 calls for local implementation on 22 specifically enumerated items. The items permitted to be implemented at the local level relate to such matters as what constitutes a work week, cleanup time, selection of vacation times, the number of employees on leave during choice vacation times, selection of employees to work on holidays, whether overtime lists shall be by section or tour, light duty assignments, assignment of employee parking spaces, local implementation of the National Agreement relating to seniority, reassignment, and job postings, and ''those other items which are subject to local negotiations as provided in the craft provisions of this agreement.'' Article 30 further reflects that ''All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the National Union President.'' As alluded to above, the Local Union represents employees at initial steps in the grievance procedure. I am persuaded the Local Union (Charging Party) has a significant and legitimate role in the collective-bargaining process herein. In summary and in light of all the above, I find the Local Union is a labor organization within the meaning of Section 2(5) of the Act.

May the Local Union properly file and have the charge underlying the complaint herein lawfully maintained? I am persuaded it can for the reasons that follow. First, the purpose of a charge is merely to set in motion the machinery of an inquiry. *NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959). Second, the individual signing the underlying charge herein, Dimondstein, was at the time, and continues to be, a steward designated by American Postal Workers Union, AFL–CIO for the location herein pursuant to article 17 of the National Agreement between the American Postal Workers Union, AFL–CIO, and the Postal Service. Stewards, such as Dimondstein, are designated by American Postal Workers Union, AFL–CIO ''for the purpose of investigating, presenting, and adjusting grievances'' during the initial stages thereof. Designated stewards, such as Dimondstein, may, according to article 17 of the National Agreement, ''request and shall have access through the appropriate supervisor to review the documents, files, and other records necessary for processing a grievance or determining if a grievance exists . . . .'' Dimondstein, as a designated steward of American Postal Workers Union, AFL–CIO, had, and continues to have, implicit authority to pursue all available avenues to obtain information needed to process grievances arising at the Greensboro, North Carolina location. One of the avenues available to obtain properly requested information is to file, as Dimondstein did, a charge with the Board. Third, language in the complaint indicates the actions taken by the Local Union (Charging Party) were taken on behalf of the exclusive bargaining representative, namely, American Postal Workers Union, AFL–CIO. In that regard, I note it is alleged at paragraph 7 of the complaint that the Local Union, as described earlier, sought the requested information ''in its capacity as an agent of the exclusive bargaining representative of the employees in the . . . unit.'' In summary, I am persuaded the charge underlying the complaint herein, was properly filed and may be legally maintained. Accordingly, I deny the Postal Service's request to dismiss the case on the ground the Local Union lacked standing to bring the charge. Related thereto, I deny the Postal Service's motion to dismiss the complaint on the basis the complaint fails to state a claim upon which relief can be granted. I do note that the exclusive bargaining representative involved herein is American Postal Workers Union, AFL–CIO[2] and as such any remedy for any unfair labor practices that might be found would run to the National Union and not to the Local Union alone.

III. THE DEFERRAL ISSUE

There are two statutory principles outlined in the Act that impact on the question of deferral. First, there is the stated policy and general principle that the Board will look to the parties to resolve their disputes through their contractually agreed-upon grievance and arbitration machinery. As the Postal Service noted in its posttrial brief, Section 201(a) of the National Labor Relations Act states:

> It is the policy of the United States that (a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between the employers and the representatives of their employees.

Additionally, I note the Act at Section 203(d) speaks about the desirable method for the settlement of disputes as follows:

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[2] American Postal Workers Union, AFL–CIO has been recognized as the collective-bargaining agent for a nationwide unit of postal clerks. See, e.g., *Postal Service*, 302 NLRB 767 (1991).

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

The second statutory principle outlined in the Act that impacts on the question of deferral is found at Section 10(a) of the Act. This second principle is that the Board's power to prevent unfair labor practices prevails over other related factors or considerations. Section 10(a) reads in pertinent part as follows:

> The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice . . . affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . . .

The Board has attempted to reconcile these two principles in its *Collyer Insulated Wire*, 192 NLRB 837 (1971) doctrine. The *Collyer* doctrine, as revived in *United Technologies Corp.*, 268 NLRB 557 (1984), was recently described by Administrative Law Judge Timothy D. Nelson in *U.S. Borax & Chemical Corp.*, JD(SF)–7–91, January 30, 1991, as follows:

> Where the private disputants before the Board are bound to a contractual scheme which on its face appears capable of addressing the statutory issues in the Board case, and the charged party is willing to submit the dispute to that private forum, then, normally, the Board will ''direct'' or ''adjure'' the charging party to give the private scheme a chance to work, without regard to the charging party's current preference of forum, and will dismiss the complaint provisionally, retaining only a limited jurisdiction to ensure that the dispute will be processed expeditiously within the private system, and, upon challenge by the General Counsel, to ''review'' any purported resolution of the dispute reached within that system.

Would it best effectuate the purpose and policies of the Act to defer this case to arbitration as urged by the Postal Service? I am persuaded it would not. It is the Board's general policy not to defer information requests to the parties' arbitration process. See *Clinchfield Coal Co.*, 275 NLRB 1384, 1395 (1985). The Board at footnote 4 in *Clinchfield Coal* noted it has been reluctant to defer to arbitration issues raised by information requests made in the process of resolving grievances because of the potential for delays attendant in such a procedure. A concern, among others, is that additional grievances might have to be filed in an effort to obtain assertedly needed information. If, on the other hand, relevant information is initially provided, it may be determined that the grievance need not be pursued further. The potential for delay in deferring information requests would be inconsistent with the Board's policy of the expeditious resolution of disputes through arbitration.

There does not appear to be any factors in the instant case that would warrant a departure from the Board's general policy of not deferring information request cases. Accordingly, I find deferral would be inappropriate here.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

On November 12, Postal Service Supervisor of Mails at pay location 183 Jesse Auman (Auman) placed pay location 183 employee Delanie McElrath (McElrath)[3] on restricted sick leave[4] in accordance with Part 513.37 of the Employee and Labor Relations Manual.[5] Supervisor Auman testified he went about determining whether to place any particular employee on restricted sick leave by reviewing employee absence analysis forms known as Forms 3972.[6]

Pursuant to article 15 of the National Agreement, a grievance was filed related to McElrath's being placed on restricted sick leave. Union steward Dimondstein was appointed to handle McElrath's grievance and in conjunction therewith made a written request to Postal Service Labor Relations Representative Michael Ellis (Ellis) that the Union be provided the Forms 3972 of nine (including McElrath) pay location 183 employees.[7] Dimondstein also requested Ellis identify which, if any, employees other than McElrath that had been placed on restricted sick leave. When Labor Relations Representative Ellis returned the Union's information request he noted thereon that ''names and social security numbers will not appear on the 3972s, due to confidentiality and Privacy Act concerns.''[8] Ellis did not identify which, if any, of the employees had been placed on restricted sick leave.[9] Within a few days, Labor Relations Representative Ellis provided the Union the requested Forms 3972 but all identifying factors, including names and social security numbers had been removed from the forms.

The Union's grievance on McElrath's behalf asserts the Postal Service violated articles: 2 ''Non-Discrimination and Civil Rights''; 5 ''Prohibition of Unilateral Action''; and 19 ''Handbooks and Manuals'' of the National Agreement.[10]

Union Steward Dimondstein testified that when he met with the grievant, McElrath, she expressed concern that she had been singled out for restricted sick leave possibly for two reasons. First, she had been a very active union officer and shop steward[11] who had been discussing grievances with Supervisor Auman during the weeks immediately before he

[3] At places in the record, the name is spelled ''McEldreth.'' Either spelling refers to the same individual.

[4] While on restricted sick leave, an employee must submit medical documentation for each sick leave absence.

[5] Part 513.37 of the Employee and Labor Relations Manual lists as a reason for such restriction that a supervisor has evidence, based upon a review of the employee's absence file, that the employee is abusing sick leave privileges.

[6] Forms 3972 are official Postal Service forms on which a supervisor records an individual employee's attendance record based on (1) daily leave requests known as Forms 3971 submitted by the employees, and (2) unscheduled leave taken by employees.

[7] Dimondstein specifically requested the names be left on the Forms 3972.

[8] Ellis noted on the request that to obtain a Form 3972 with an employee's name and social security number left thereon, the Union would have to obtain a written release from the employee involved.

[9] Ellis noted on the information request that to obtain a list of employees on restricted sick leave, the Union would need a signed release from each of the affected individuals.

[10] In regard to the latter article, the Union asserts the Postal Service violated part 513.37 of the Employee and Labor Relations Manual.

[11] Dimondstein testified McElrath was a local union officer, shop steward, and executive board member.

placed her on restricted sick leave. Secondly, Dimondstein testified McElrath expressed concern that she had been singled out for racially motivated reasons.[12] McElrath told Dimondstein that eight pay location 183 employees had similar or possibly worse leave records than she did, but that those employees had not, to her knowledge, been placed on restricted sick leave.[13] Dimondstein said he requested the Forms 3972 based on McElrath's dual claims of disparate treatment.

Dimondstein testified without contradiction that the Postal Service never provided a list of those pay location 183 employees that were on restricted sick leave other than McElrath. Dimondstein said he was unable to follow through with a deeper investigation of McElrath's grievance based on the Forms 3972 because without names or other identifying marks, he didn't even know ''who was who'' or even if the Forms 3972 were for the employees he had requested.

On December 10, long-time pay location 183 employee Wilhelmina Williams (Williams) was placed on restricted sick leave by Supervisor Auman. A grievance was filed related thereto. Union Steward Dimondstein handled Williams' grievance and on December 20, requested the Forms 3972 for all 26 employees at pay location 183. Dimondstein requested that the names of the employees be left on the forms. Dimondstein explained in the written request that it was ''for comparison purposes to prove disparate and discriminatory treatment of grievant.'' Labor Relations Representative Ellis responded to the request by notifying the Union that the Forms 3972 would only be provided without the employees' names and social security numbers. The Union declined to accept and/or pay for the requested information without the employees' names and social security numbers being left on the forms.

Dimondstein testified he requested the Forms 3972 for Williams' grievance because it was Williams' contention she had been discriminated against because she was a black female and because ''she had engaged in'' ''numerous'' activities on behalf of the Union immediately prior to being placed on restricted sick leave. Dimondstein testified Williams told him she believed some employees had ''a certain arrangement with the supervisor that allowed them to call them at home and avoid unscheduled absences'' while she and other employees did not have that privilege. Dimondstein said that by reviewing the Forms 3972 for all employees at pay location 183 he would have been able to ascertain if it appeared Williams had been discriminated against, and if it appeared she had, he would then have been in a position to possibly have requested the same employees' Forms 3971.[14]

The governing principles in deciding whether an employer is required to furnish a union with information are well established; however, a brief statement of some of those principles is appropriate. An employer is under a duty to provide a union which represents the employer's employees with information requested by the union which is relevant and necessary for the proper performance of the union's duties in representing the unit employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). This duty extends not just to information which is useful and relevant for the purposes of contract negotiations, but also to that which is necessary to informed administration of a collective-bargaining agreement. *Safeway Stores*, 252 NLRB 1323 (1980). Relevancy is to be measured with a liberal discovery type yardstick. The test is a simple one, namely, whether the information sought is probably or potentially relevant to the union in fulfilling its statutory representational duties. *Acme Industrial Co.*, supra. Simply stated, an employer has a duty to provide information that is reasonably necessary for the processing of grievances. *Washington Gas Light Co.*, 273 NLRB 116 (1984). Necessity for the information is not a guideline in itself but is directly related to relevancy. *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 69 (3d Cir. 1965). Requested data which concerns conditions of employment within the bargaining unit is presumptively relevant. *Pfizer, Inc.*, 268 NLRB 916 (1984). Data regarding discipline of unit employees is deemed relevant information. *General Dynamics Corp.*, 270 NLRB 829 (1984).

Considering the instant case in light of the above, I conclude the Postal Service had a duty to furnish the information requested by the Union with respect to both grievances. While I believe the reasons for requesting such information are obvious, I shall briefly examine those reasons in light of Union Steward Dimondstein's testimony. Grievant McElrath in discussing her grievance with Union Steward Dimondstein asserted, based on her personal observations, that others at her pay location had similar or even worse leave records that she had without any action taken against them. Therefore, she contended the action taken against her had to have been based on her race or union activities. A way for Union Steward Dimondstein to investigate McElrath's claims was for him to review the leave records of the employees McElrath identified. Without names and/or social security numbers on the forms, Dimondstein could hardly be expected to make an informed evaluation of McElrath's grievance or for that matter to even know if the forms provided were for fellow workers at McElrath's pay location.[15] Furthermore, even the information that was provided did not indicate, as had been requested, which, if any, of the employees had been placed on restricted sick leave. Again, without that information, the Union was unable to make an informed evaluation as to whether McElrath was being treated in a disparate manner. With the information it had requested, the Union might have been better prepared to litigate McElrath's grievance or alternatively encouraged to drop it. I am persuaded the Union's request for the Forms 3972 with the names left thereon along with the information related to which, if any, of the employees had been placed on restricted sick leave was for information that was necessary and relevant to its duty to represent bargaining unit employee McElrath.

Regarding the information the Union sought with respect to the grievance involving employee Williams, it is again clear the information was relevant and necessary to the Union's investigation of the Postal Service's actions involving Williams. The Union sought the Forms 3972 for all 26 employees at pay location 183 in order to either substantiate

[12] McElrath is a black female, Supervisor Auman is a white male.

[13] The eight McElrath identified were the ones Dimondstein requested Forms 3972 for.

[14] Forms 3971 are the forms on which daily leave requests are made by the employees to their immediate supervisors.

[15] In that regard, it is noted that although the Union requested Forms 3972 for employees who worked with McElrath at pay location 183 one of the forms provided (without a name or social security number) was for pay location 161.

or refute Williams' claim she was being subjected to disparate or discriminatory treatment. Williams had asserted to the Union that numerous employees at her pay location (183) had more sick leave absences than she but that the other employees had not been placed on restricted sick leave.

In light of all the above, I am persuaded, absent a legitimate showing the information was confidential or that the Privacy Act forbids such disclosure, the Postal Service breached its bargaining obligation when it refused to provide the Union with the Forms 3972 it requested with names and other identifying matters left in place and when it further refused to identify which, if any, employees had been placed on restricted sick leave.

Consideration will now be given to the Postal Service's claim that the information requested was, and remains, confidential and/or that the Privacy Act forbids disclosure of the requested information.

The duty to provide information is not absolute. The Supreme Court held in *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979), that a union's interest in arguably relevant information does not always prevail over all other competing interests. In *Detroit Edison*, the Court held that in deciding whether an employer had a duty to supply information it contended was confidential that a balancing of the interests test must be applied in that the union's need for the information must be weighed against the legitimate and substantial confidentiality interests of the employer. Thus, confidentiality, where adequately established, has been held to be a valid basis for declining to fully produce union requested data. See *Bacardi Corp.*, 296 NLRB 1220 (1989), and the cases cited therein.

The Postal Service contends it is obligated to, and is, protecting the privacy rights of Postal Service employees by refusing to provide the Union with the requested Absence Analysis records without deletions. The Postal Service asserts Forms 3972 are, pursuant to the Employee and Labor Relations Manual ''Level 2 Records'' for the purpose of confidentiality and as such should not be produced. Employee and Labor Relations Manual section 314.5 ''Supervisor's Personnel Records and Personal Notes'' in pertinent part reads as follows:

> 314.51 General. Supervisors establish an adequate personal filing system for the performance of their daily responsibilities and to maintain compliance with the provisions of the Privacy Act. Supervisor's Personnel Records are maintained by the Postal Service within the privacy system of records identified as USPS 120.190.
>
> 314.52 Levels of Information. In order to meet the requirements of the Privacy Act, the Postal Service has defined three levels of personnel information for general use:
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> . . . .
>
> Level 2—Supervisor's Personnel Records
>
> . . . .
>
> 314.53 Maintenance. Level 1 and 2 records are subject to the provisions of the Privacy Act.
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> . . . .
>
> 314.54 Supervisor's Personnel Records (Level 2 Records).
>
> 314.541 Contents. Supervisor's personnel files may include such employee records as: discussions, letters of warning and other disciplinary records; copies of records filed in the OPF; . . . attendance records; . . . and other information at the supervisor's discretion.
>
> 314.542 Privacy Act Requirements. These records are personal and must be provided the same level of security as OPFs; i.e., storage in a locked desk or file cabinet and access restricted to those with the need to
>
> 314.543 Disclosure. Upon request, from the subject employee, Supervisor's Personnel Records (Level 2) about that employee must be shown to him or her. In addition, Level 2 records are to be disclosed to persons who have the written consent of the subject employee. Level 2 records may be disclosed without the subject's consent to Postal Service officials only when needed in the course of official business; to collective-bargaining agents when relevant to a grievance; to EEO investigations when relevant to a formal EEO complaint; or for other reasons specifically authorized by the Privacy Act.

As is readily apparent from a reading of the above, the Postal Service may not refuse to provide the requested forms on the basis the forms are confidential level 2 supervisory forms in that the pertinent section of the Employee and Labor Relations Manual specifically provides for the disclosure of level 2 documents to collective-bargaining agents such as Dimondstein, ''when relevant to a grievance.'' I note Postal Service Labor Relation Representative Ellis had, pursuant to the Employee and Labor Relations Manual, provided Forms 3972 to the Union on request with names and social security numbers left thereon until approximately May. At that time, the Postal Service began to contend the Forms 3972 were confidential documents. Ellis began this practice of only providing the Forms 3972 with the names and social security numbers deleted after the Union processed a grievance to arbitration concerning unlimited access by temporary (bargaining unit members) supervisors to Level 2 supervisor's records. That arbitration award, referred to by the parties as the Hardin award,[16] may not serve as a legitimate basis for the Postal Service's confidentiality claim herein. An award related to whether someone acting as a temporary supervisor may have unlimited access to personnel files is a completely separate issue that is of no moment to whether the Postal Service has a duty to provide, without deletion, Forms 3972 needed in the processing of employee grievances. I find this aspect of the Postal Service's defense to be totally without merit.

The Postal Service's asserted statutory defense based on the Privacy Act[17] must also fail. While the Privacy Act prohibits the wrongful disclosure of records covered by it[18] there are 12 exceptions to the prohibitions of disclosure.[19] One of the exceptions is for ''routine use'' as defined by agency regulations.[20] As set forth in the ''Privacy Act Issuances 1989 Compilation, Federal Register, Volume V, Systems of Records Agency Rules,'' at page 435 ''Postal

[16] The arbitrator was Professor Patrick Hardin.

[17] Privacy Act of 1974, 5 U.S.C. § 552(a), Pub. L. §§ 93–579, 88 stat. 1896.

[18] It is undisputed that the Postal Service is subject to the Privacy Act and that it has certain obligations with respect thereto.

[19] The exceptions to nondisclosure are found at 5 U.S.C. § 552a(b).

[20] 5 U.S.C. § 552a(b)(3).

Service Prefatory Statement of Routine Uses'' Subsection M ''Disclosure to Labor Organizations,'' the Postal Service has published a routine use that permits disclosure:[21]

> Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

The Union made its request for the Forms 3972 and related information in order to process grievances filed on behalf of bargaining unit employees pursuant to the parties' National Agreement. Thus, the Privacy Act does not justify the Postal Service's refusal to provide the complete Forms 3972 the Union requested.

In summary I find the Postal Service violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Forms 3972 with names and social security numbers thereon as requested by the Union and that it further violated the Act by refusing to timely inform the Union which, if any, of the employees in question had been placed on restricted sick leave.[22]

CONCLUSIONS OF LAW

1. United States Postal Service is an employer subject to the jurisdiction of the National Labor Relations Act and the National Labor Relations Board.

2. American Postal Workers Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. American Postal Workers Union, Greater Greensboro SCF Area Local 711, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

4. American Postal Workers Union, AFL–CIO by virtue of Section 9(a) of the Act is the exclusive representative of all Postal Service employees (including employees employed at the general mail facility located at 900 E. Market Street, Greensboro, North Carolina) in the following unit, appropriate for bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Postal Service in the clerks, motor vehicle, special delivery, and maintenance crafts throughout the United States, but excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers or mail handlers.

THE REMEDY

Having found that the Postal Service has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Postal Service be ordered to furnish the Union, on request, the Absence Analysis Records without deletions (Postal Service Forms 3972) of all employees employed at pay location 183 and to identify which, if any, of those employees have been placed on restricted sick leave. I shall also recommend that the Postal Service be ordered to post a notice to its employees attached hereto as ''Appendix'' for a period of 60 days in order that the employees may be apprised of their rights under the Act and the Postal Service's obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, United States Postal Service, Greensboro, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with American Postal Workers Union, AFL–CIO as the exclusive bargaining representative of its employees in an appropriate unit by refusing to furnish the Union with the absence analysis records without deletions (Postal Service Forms 3972) of all employees employed at pay location 183 and from timely refusing to identify which, if any, of those employees have been placed on restricted sick leave.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the information it requested as defined above in paragraph 1(a).

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[21] For a discussion of the Privacy Act as it applies to the Postal Service in Board cases, see *Postal Service*, 280 NLRB 685, 693 (1986), enfd. 841 F.2d 141 (6th Cir. 1988).

[22] It is no defense to the Postal Service that it revealed at trial whether other pay location 183 employees had been placed on restricted sick leave inasmuch as even the failure to timely supply relevant and necessary requested information violates Section 8(a)(5) of the Act. See, e.g., *D. J. Electrical Contracting*, 303 NLRB 820 (1991). It is likewise no defense to the Postal Service that the Williams' grievance has been settled.

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Post at its Greater Greensboro, North Carolina location copies of the attached notice marked ''Appendix.''[24] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Postal Service's authorized representative, shall be posted by the Postal Service immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Postal Service to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''